

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

## ORDER THEREON

1 WHEREAS, on April 30, 2009, the Association of Irrigated Residents filed the complaint  
2 in the above-captioned matter against the United States Environmental Protection Agency et al.  
3 (collectively, "EPA"), alleging that EPA has failed to undertake certain nondiscretionary duties  
4 under section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2);

5 WHEREAS, Plaintiff's claims in this matter, other than the costs of litigation and  
6 reasonable attorneys' fees, were resolved by a Consent Decree entered by the Court on  
7 December 30, 2009, see Dkt. 20;

8 WHEREAS, Plaintiff and EPA wish to settle Plaintiff's claims for costs of litigation in  
9 this matter, including reasonable attorneys' fees, in order to avoid unnecessary litigation and  
10 without any admission of fact or law;

11 NOW THEREFORE, the parties, by and through their undersigned counsel, hereby  
12 stipulate to the entry of an order that:

13 1. The United States shall pay, within 90 days, \$16,500 to the Center on Race,  
14 Poverty & the Environment by electronic funds transfer in accordance with instructions provided  
15 to Defense counsel by Plaintiff's counsel.

16 2. Any obligation of the United States to expend funds under this settlement  
17 agreement is subject to the availability of appropriations in accordance with the Anti-Deficiency  
18 Act, 31 U.S.C. § 1341. This settlement agreement shall not be construed to require the United  
19 States to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341.

20 3. Payment pursuant to Paragraph 1 within 90 days of the date on which the Court  
21 enters this Stipulation and Order (or after 90 days if Plaintiff accepts payment after that date)  
22 will constitute full and final payment of costs of litigation, including reasonable attorneys' fees,  
23 incurred by Plaintiff in connection with this case prior to the Court's entry of the Consent Decree  
24 and in negotiating this Stipulation and Order. Upon payment within 90 days of the date on  
25 which the Court enters this Stipulation and Order (or upon payment after 90 days if Plaintiffs  
26 accept payment), Plaintiff releases the United States, including EPA, from any claims regarding  
27 such fees and costs incurred by Plaintiff in connection with this case prior to the Court's entry of  
28 the Consent Decree and in negotiating this Stipulation and Order. The payment pursuant to  
Paragraph 1 does not affect Plaintiff's right to seek to recover reasonable costs and attorneys'

fees that Plaintiff may incur to enforce the Consent Decree, nor does it affect the right of EPA to oppose any such request for fees and costs, as provided in Paragraph 11 of the Consent Decree.

4. In the event the United States fails to pay the sum specified in Paragraph 1 within 90 days of the date on which the Court enters this Stipulation and Order, Plaintiff may file a motion with the Court for its costs of litigation, including reasonable attorneys' fees. Such motion shall be filed no later than 150 days after the date the Court enters this Stipulation and Order. The parties agree that, in litigation over such fee application, the United States reserves any defenses it may have to a fee application.

FOR THE DEFENDANTS: Respectfully submitted,  
IGNACIA S. MORENO  
Assistant Attorney General  
Environment & Natural Resources Division

Dated: April 06, 2010 /s/ Rochelle L. Russell  
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FOR THE PLAINTIFF:  
Dated: April 06, 2010 /s/ Alegría De La Cruz (with permission)  
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**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: 4/8/2010   
CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE